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FILED
Superior Court of California
County of Los Angeles

SEP 25 2017

Sherri R. Carter, Executive Officer/Clerk
By Sherri R. Carter Deputy
Nancy Alvarez

✓
6 Attorneys for Defendants, SILVERWOOD PROPERTIES, INC. and KENNETH HOWARD
7 SHAPIRO

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10 DAVID A. GLAZER, an individual,

11 Plaintiff,

12 vs.

13 CHENEY ADRIENNE SHAPIRO; CHENEY
14 SHAPIRO DESIGNS 401K; CHENEY SHAPIRO
15 DESIGNS; RESOURCEFUL DEVELOPMENTS,
16 INC.; RICHARD JUDSON WILLIAMS;
17 SILVERWOOD PROPERTIES, INC.; KENNETH
18 HOWARD SHAPIRO; PODLEY ASSOCIATES
19 REALTORS; LINDA DARLINGTON SEYFFERT;
20 SEISMIC SAFETY, INC.; EDUMUND J. SYLVIS;
21 KEN LAMARR COMPTON; AND DOES 1
22 THROUGH 250.

23 Defendants.

Case No.: BC669741
Complaint Filed: July 25, 2017

Assigned to Honorable Richard E. Rico
Dept.: 17

ANSWER OF DEFENDANTS
SILVERWOOD PROPERTIES, INC.
AND KENNETH HOWARD SHAPIRO
TO THE COMPLAINT OF PLAINTIFF
DAVID A. GLAZER

23 Defendants SILVERWOOD PROPERTIES, INC. and KENNETH HOWARD SHAPIRO
24 (collectively the "Answering Defendants"), for themselves only, file their Answer to the Complaint
25 ("COMPLAINT") filed by Plaintiff DAVID A. GLAZER (hereinafter "Plaintiff") as follows:

GENERAL DENIAL

26 By virtue of and pursuant to the provisions of the Code of Civil Procedure section 431.30,
27 these Answering Defendants, generally and specifically deny each and every, all and singular,

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1 conjunctively and disjunctively, the allegations contained in said COMPLAINT, and each and every
2 part thereof, and each and every cause of action thereof, and further specifically deny that Plaintiff
3 has been injured or damaged in the sum alleged, or in any other sum, or at all, by reason of any
4 carelessness, negligence, act or omission of these Answering Defendants.

5 **FIRST AFFIRMATIVE DEFENSE**

6 *(Fails to State Facts Sufficient to Constitute a Cause of Action)*

7 1. As a first and separate affirmative defense to each and every cause of action stated in
8 Plaintiff's COMPLAINT as against them, these Answering Defendants allege that said causes of
9 action fail to state facts sufficient to constitute a cause or causes of action against these Answering
10 Defendants.

11 **SECOND AFFIRMATIVE DEFENSE**

12 *(Statute of Limitations)*

13 2. As a second and separate affirmative defense to each cause of action asserted against
14 them, these Answering Defendants allege that Plaintiff's COMPLAINT on file herein is barred by
15 reason of the applicable statutes of limitations, including but not limited to Code of Civil Procedure
16 sections 337, 340, 337.1, 337.15, 338, 339, 343 and Civil Code section 2079.

17 **THIRD AFFIRMATIVE DEFENSE**

18 *(Comparative Negligence)*

19 3. As a third and separate affirmative defense to each and every cause of action stated in
20 the COMPLAINT as against them, these Answering Defendants allege that Plaintiff was negligent
21 in and about the matters alleged in the COMPLAINT and failed to exercise due care for his own
22 protection and that Plaintiff's damages, if any, are directly and proximately result in whole or in part
23 from Plaintiff's own negligence. Accordingly, Plaintiff's damages must be reduced in proportion to
24 Plaintiff's own fault in bringing about his damages.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 *(Third Party Negligence)*

27 4. As a fourth and separate affirmative defense to each cause of action asserted against
28 them, these Answering Defendants allege that third parties were careless and negligent in and about

1 the matters alleged in the COMPLAINT, and that said carelessness and negligence on the part of
2 said third parties proximately contributed to the happening of the accident and to Plaintiff's injuries,
3 loss and/or damage, if any, allegedly sustained. Therefore, any damages awarded to Plaintiff shall be
4 diminished in proportion to the amount of fault attributed to said third parties.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 *(Laches)*

7 5. As a fifth and separate affirmative defense to each cause of action asserted against
8 them, these Answering Defendants allege that the COMPLAINT on file herein is barred by reason
9 of Plaintiff's laches in that Plaintiff waited an unreasonable period of time to bring his
10 COMPLAINT, to the detriment of these Answering Defendants.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 *(Unclean Hands)*

13 6. As a sixth and separate affirmative defense to each cause of action asserted against
14 them, these Answering Defendants allege that Plaintiff is barred by reason of Plaintiff's coming into
15 court with unclean hands.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 *(Waived Right to Relief Sought)*

18 7. As a seventh and separate affirmative defense to each cause of action asserted against
19 them, these Answering Defendants allege that Plaintiff has waived his rights to the relief sought in
20 the COMPLAINT against these Answering Defendants by virtue of its acts, conduct, representations
21 and omissions.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 *(Mitigate Damages)*

24 8. As a eighth and separate affirmative defense to each and every cause of action
25 asserted against them, these Answering Defendants allege that Plaintiff could have, by the exercise
26 of reasonable diligence, limited or prevented his damages, if any, as a result of the actions alleged in
27 the COMPLAINT and that Plaintiff has failed or refused to do so. Such failures or refusals on the
28 part of Plaintiff constitute failure to mitigate his damages.

NINTH AFFIRMATIVE DEFENSE

(Acts of Fictitiously Named Defendants)

9. As a ninth and separate affirmative defense to each cause of action asserted against them, these Answering Defendants are informed and believe and thereon allege that they are not legally responsible for the acts and/or omissions of those defendants fictitiously named herein as DOES.

TENTH AFFIRMATIVE DEFENSE

(Intervening, Supervening and Superseding Causes)

10. As an tenth and separate affirmative defense to each cause of action asserted against them, these Answering Defendants are informed and believe and thereon allege that the injuries and damages of which the Plaintiff complains were proximately caused or contributed to by the acts of other defendants, persons and/or entities. Said acts were in intervening, supervening and superseding a cause of the injuries and damages, if any, of which the Plaintiff complains, thus barring Plaintiff from any recovery against these Answering Defendants.

ELEVENTH AFFIRMATIVE DEFENSE

(Estoppe)

11. As a eleventh and separate affirmative defense to each cause of action asserted against them, these Answering Defendants are informed and believe, and thereon allege, that Plaintiff has engaged in conduct with respect to the activities and/or premium which are the subject of the COMPLAINT, and by reason of said activities and conduct, is estopped from asserting any claim for damages or seeking any other relief against these Answering Defendants.

TWELFTH AFFIRMATIVE DEFENSE

(Damages Caused by Acts or Omissions Beyond Answering Defendants' Control)

12. As a twelfth and separate affirmative defense to each cause of action asserted against them, these Answering Defendants are informed and believe, and thereon allege, that the damages sustained by Plaintiff, if any, were proximately caused by the acts, omissions, negligence, fraud, and/or breach of obligations by persons other than these Answering Defendants and beyond these Answering Defendants' supervision and control.

THIRTEENTH AFFIRMATIVE DEFENSE

(Standard of Care Met)

13. As a thirteenth and separate affirmative defense to each cause of action asserted against them, these Answering Defendants are informed and believe, and thereon allege, that in all aspects these Answering Defendants met the applicable standard of care regarding Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

(Active Negligence of Plaintiff)

14. As a fourteenth and separate affirmative defense to each cause of action asserted against them, these Answering Defendants are informed and believe, and thereon allege that the damages sustained or to be sustained by Plaintiff, if any, were proximately caused or contributed to by the active negligence of Plaintiff in that he personally participated in a negligent act or omission that brought about the injuries or damages of which he is now complaining. Consequently, neither the law nor any agreement entitles Plaintiff to an indemnity.

FIFTEENTH AFFIRMATIVE DEFENSE

(Non-Economic Damages)

15. As a fifteenth and separate affirmative defense to each cause of action asserted against them, these Answering Defendants' liability for non-economic damages, if any, is limited to that percentage of those damages which are in direct proportion of these Answering Defendants' percentage of fault in accordance with Civil Code section 431.2(a).

SIXTEENTH AFFIRMATIVE DEFENSE

(Lack of Priority)

16. As a sixteenth and separate affirmative defense to each cause of action asserted against them, these Answering Defendants were not parties to the original agreement which forms the basis of Plaintiff's COMPLAINT and, therefore, Plaintiff lacks the required privity to raise the claims alleged.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(Lack of Justifiable Reliance)

17. As a seventeenth and separate affirmative defense to each cause of action asserted against them, these Answering Defendants are informed and believe, and thereon allege, that Plaintiff lacked any justifiable reliance concerning the supposed misstatements attributed to these Answering Defendants.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Set-Off to Recovery)

18. As a eighteenth and separate affirmative defense to each cause of action asserted against them, these Answering Defendants are informed and believe, and thereon allege, that they are entitled to a set-off as a result of any recovery made by Plaintiff from any other party, in connection with the damages claimed in this lawsuit.

NINETEENTH AFFIRMATIVE DEFENSE

(Damages Did Not Arise From Defendant's Alleged Breach)

19. As a nineteenth separate affirmative defense to each cause of action asserted against them, these Answering Defendants are informed and believe, and thereon allege, that as to each alleged cause of action set forth in the COMPLAINT, the conditions set forth therein and the damages related thereto did not arise out of any action by these Answering Defendants nor any act or omission related thereto and thus recovery is precluded.

TWENTIETH AFFIRMATIVE DEFENSE

(Reasonable Reliance on Information Provided by Owner)

20. As a twentieth and separate affirmative defense to each cause of action asserted against them, these Answering Defendants are informed and believe, and thereon allege, that they and their representative agents justifiably relied on information furnished by the owner or by persons directly employed by the owner of the subject property set forth in the COMPLAINT.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

(Reservation of Right to Assert Additional Affirmative Defenses)

21. As a twenty-first and separate affirmative defense to each cause of action asserted against them, these Answering Defendants allege that they currently have insufficient information upon which to form a belief as to whether he may have additional, as yet unstated, affirmative defenses available. These Answering Defendants therefore reserve the right to assert additional affirmative defenses in the event discovery indicates that they would be appropriate.

WHEREFORE, these Answering Defendants prays as follows:

1. That Plaintiff take nothing by way of his COMPLAINT on file herein;
2. That judgment be entered in the within action in favor of these Answering Defendants upon the issues of the COMPLAINT;
3. For an award to these Answering Defendants of attorney's fees, if allowed by law, and costs of suit herein incurred; and
4. For such other and further relief as the Court may deem just and proper.

Dated: September 22, 2017

CARLSON LAW GROUP, INC.

By:

Mark C. Carlson, Esq.
Warren K. Miller, Esq., Of Counsel
Attorneys for Defendants, SILVERWOOD
PROPERTIES, INC. and KENNETH HOWARD
SHAPIRO

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my present address is: 21031 Ventura Boulevard, Suite 1100, Woodland Hills, California 91364.

On September 22, 2017, I served the foregoing document described as **ANSWER OF DEFENDANTS SILVERWOOD PROPERTIES, INC. AND KENNETH HOWARD SHAPIRO TO THE COMPLAINT OF PLAINTIFF DAVID A. GLAZER** on the parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

XX BY MAIL as follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Woodland Hills, California in the ordinary course of business.

BY OVERNIGHT EXPRESS DELIVERY. I deposited it in a box or other facility regularly maintained by GOLDEN STATE OVERNIGHT/FEDERAL EXPRESS, or delivered it to a driver or courier authorized by GOLDEN STATE OVERNIGHT/FEDERAL EXPRESS to receive documents, in an envelope designated by GOLDEN STATE OVERNIGHT/FEDERAL EXPRESS, with delivery fees provided for, and with delivery requested for the next business day.

BY FACSIMILE TRANSMISSION, by use of facsimile machine telephone number (818) 884-4285, in accordance with Code of Civil Procedure §1013(e) and California Rules of Court 2.306, to the within parties at the facsimile number(s) indicated. The fax machine I used complied with Rule 2.301 and this transmission was reported as complete and without error. Under Rule 2.304, I caused the machine to print a transmission record of the transmission report which was issued by the transmitting facsimile machine, a copy of which is attached to the original thereof.

Executed on September 22, 2017, at Woodland Hills, California.

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. /

Karon Rudolph

David A. Glazer v. Cheney Adrienne Shapiro, et al.

LASC Case No.: BC669741

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